

DIVISION OF MINES GUIDELINES FOR APPLICATION OF REGULATORY STANDARDS MANUAL	
COAL MINE SAFETY ACT	CHAPTER 14.2
ARTICLE 9	ENFORCEMENT AND PENALTIES; REPORTS OF VIOLATION
Issue Date: 4/10/00 Revised Date: 4/15/04	Page 1 of 3

Section 45.1-161.90.A.

Notices of Violation.

Basis for Reports of Violation:

Section 45.1-161.8 of the Mine Safety Act (MSA) defines an “operator” as any person who operates, controls, or supervises a mine or any independent contractor performing services or construction at such mine.

Section 45.1-161.14 of the MSA requires an operator of any mine or his agent to operate his mine in full conformity with the MSA. The operator and his agents are generally deemed responsible for the conduct of miners employed in service at the mine with regard to compliance with all provisions of the MSA. See also Section 45.1-161.8 for additional information about the definition of an operator.

Section 45.1-161.90 of the MSA requires a mine inspector with reasonable cause to believe that a violation of the Act has occurred to issue a notice of violation to the person (operator, contractor, or individual) who is responsible for the violation. The MSA clearly mandates that a notice of violation be issued to the person who is responsible for the violation. This can be the individual, operator, agent or contractor; and where joint responsibility is established, all parties may be cited.

Citing Violations to an Individual:

Citing a notice of violation to an individual miner is not only required by the MSA when appropriate but is an important deterrent to the performance of unsafe acts at a mine. Therefore, the mine inspector must carefully consider and establish appropriate responsibility when determining whom to cite in issuing a notice of violation.

When the mine inspector has reason to believe a violation of the MSA has occurred, he should evaluate the following in determining if the notice of violation should be issued to an individual:

- Determine that a violation of the MSA has occurred.

- Determine that the individual is directly responsible for the violation of the MSA by witnessing the unsafe act or by evidence that indicates that an individual has violated the MSA.
- The individual's knowledge and experience should be considered as it relates to the occurrence of the violation. Was proper training and supervision provided by the operator and/or agents to prepare the individual to perform assigned duties in compliance with the MSA.
- The provision and availability of necessary equipment, supplies and other resources by the operator to safely perform assigned duties in compliance with the MSA.
- Determine whether the individual knowingly violated the MSA, or should have known that the act or behavior was unlawful.
- Determine if the mine operator contributed to, had knowledge of or otherwise participated in the unsafe act or behavior relating to the violation.
- If necessary, discuss the facts and information gathered with the DM supervisor before issuance of the individual violation.
- Inform the mine operator and individual of the unsafe act or behavior that has resulted in the issuance of the violation. (Violations may have to be issued to the operator and individual when the facts determine that both were willing participants in the violation of the MSA).
- Issue a notice of violation to the individual, referencing the appropriate section of the MSA. If the violation created an imminent danger, issue an imminent danger order to the licensed mine operator under SECTION 45.1-161.91.A. (i), referencing the appropriate section of the MSA.

DM has, in some circumstance, required that training related to the violation be conducted through the process of correcting individual violations. To determine if and what type training is to be completed to correct individual violations, the circumstances should be reviewed with the area supervisor. If the individual fails to comply with requirements to correct the violation, a failure to abate order must be issued to the mine operator, affecting the individual under 45.1-161.91.A. (iv). Board of Coal Mine Examiners or other legal actions may be necessary when certified persons are neglectful in their duties resulting in individual violations issued to a certified person.

Independent Contractor Identification:

In order to recognize the separate existence and thus responsibility of an "independent contractor", the Division must have documentation of that existence. Without such documentation, the inspector should consider that the licensed mine operator is the party

solely responsible for the site. With the necessary identifying information, the inspector may proceed to analyze the apportionment of responsibility among the separate entities operating on the site.

The licensed operator must provide the inspector with the following information to establish the existence of an independent contractor on the licensed mine site:

- The contractor's name, business address and business telephone number
- A description of the scope of the work to be performed by the contractor and the work to be performed on the mine site
- The contractor's MSHA identification number, if any
- The contractor's address of record for service of citation, or other documents involving the independent contractor.

Issuing Notices of Violations and Closure Orders to Independent Contractors:

In deciding to whom to issue a violation, the inspector should take into account the following factors:

- Whether the mine operator (i) contributed to the existence of a violation by any act, (ii) knew of a violation and failed to have the violation corrected, or (iii) should have known from an inspection required under the MSA of the occurrence or continued existence of a violation, when the violation happened in the course of the contractor's work.
- The licensed mine operator's miners were exposed to a hazard created by the violation.

Based on these criteria, the inspector should then determine the responsible person or persons for each violation and cite them accordingly.